

REMARKS

This Application has been carefully reviewed in light of the Final Office Action dated July 30, 2008. Applicants amend Claim 21 to correct an informality. Applicants respectfully request reconsideration and favorable action in this case in light of the remarks below.

Section 102 Rejections

The Final Office Action rejects Claims 1-28 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,922,786 issued to Ong ("*Ong*"). The Final Office Action also rejects Claims 1-28 under 35 U.S.C. § 102(a) as allegedly being anticipated by a paper entitled "Call Filtering and Tracking in IP Telephony" by Cao, Ha, Padmanabhan, Yuan, and Tran, ("*Cao*"). Applicants respectfully traverse these rejections as previously noted in a Response to Final Office Action filed April 30, 2008 (the "April 30 Response") and as explained further below.

Rejection of independent Claims 1, 9, 17, and 27 under 35 U.S.C. § 102 over *Ong*

As Applicants previously noted, *Ong* fails to recite, expressly or inherently, every element of Claim 1. For example, *Ong* fails to disclose "transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call." In addressing this element of Claim 1, the previous Office Action cited to a portion of *Ong* indicating only that "[t]he real-time firewall 150 receives real-time packets from the source network and forwards packets that are accepted according to some filtering characteristics described in the corresponding control protocol." *Ong*, col. 3, ll. 48-51, emphasis added. As Applicants noted in the April 30 Response, the Examiner attempts to equate the forwarded packets described by the cited portion with the claimed "notification message," but *Ong* does not indicate that the forwarded packets "identif[y] [a] call identifier and the filter status of [a] call." Thus, *Ong* fails to disclose "transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call" (emphasis added) as recited by Claim 1.

The Final Office Action responds to this argument by citing to portion of *Ong* indicating that the filtering characteristics "may be any one of a traffic characteristic, a network address, a port identifier, any combination of source and destination addresses and

port numbers, or packet fields such as the presence of an RTP header, corresponding to the call at the end system 120 or 180.” *Ong*, col. 4, ll. 9-14. Applicants respectfully remind the Examiner that for a rejection under 35 U.S.C. § 102 to be appropriate, the Applicants respectfully note that, for a rejection under 35 U.S.C. § 102 to be proper, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim,” and “[t]he elements must be arranged as required by the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990); M.P.E.P. § 2131 (emphasis added). Applicants respectfully note that this means the Examiner cannot reject a claim under 35 U.S.C. § 102 based on conclusory statements as to what a reference teaches without identifying a portion of the reference that supports the Examiner’s assertions. Here, the Final Office Action asserts that “without a call identifier a certain packet cannot be distinguished from other packets that related to other calls.” Final Office Action, p. 7, emphasis added. Even assuming this assertion is correct, the Final Office Action still fails to explain how the cited portion of *Ong* discloses any “filter status.” Thus, the cited portion of *Ong* fails to disclose “transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call” (emphasis added) as recited by Claim 1.

Furthermore, even if the described “filtering characteristics” did identify both “the call identifier and the filter status of the call” as the Final Office Action alleges, *Ong* still fails to disclose “transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call” (emphasis added) as recited by Claim 1. The Final Office Action equates packets forwarded by the filter of a “firewall 150” with the claimed “notification message,” but *Ong* does not disclose that packets forwarded by the firewall include the described “filtering characteristics.” Instead, *Ong* indicates that the “filtering characteristics” are used by the firewall to accept or reject packets received by the firewall. Specifically, *Ong* indicates that the firewall “filters a packet in a ball transmitted from the source network based on the filtering characteristic. The filter accepts the packet if the packet satisfies the filtering characteristic and rejects the packet otherwise.” *Ong*, col. 2, ll. 21-25. Thus, even if the filtering characteristics described by *Ong* did identify both “the call identifier and the filter status of the call,” *Ong* still does not indicate that the packets forwarded by the firewall include any these “filtering

characteristics.” Consequently, *Ong* still fails to disclose “transmitting a notification message to a remote node, wherein the notification message identifies the call identifier and the filter status of the call” as recited by Claim 1.

As a result, *Ong* fails to recite expressly or inherently every element of Claim. Claim 1 is thus allowable for at least these reasons. Although of differing scope from Claim 1, Claims 9, 17, and 27 are allowable for at least analogous reasons. Applicants respectfully request reconsideration and allowance of Claims 1, 9, 17, and 27, and their respective dependents.

Rejection of independent Claims 7, 15, 24, and 28 under 35 U.S.C. § 102 over *Ong*

As Applicants previously noted, *Ong* fails to recite, expressly or inherently, every element of Claim 7. For example, *Ong* fails to disclose “receiving a request message from a remote node, wherein the request message includes a call identifier; [and] . . . transmitting an acknowledgement message to the remote node, wherein the acknowledgement message identifies the filter status.” In addressing these elements of Claim 7, the Final Office Action attempts to equate the claimed “request message” with a “request (REQ) message” disclosed by *Ong* and the claimed “acknowledgement message” with a “decision (DEC) message” disclosed by *Ong*. Final Office Action, p. 4. As the Final Office Action essentially concedes, *Ong* does not explicitly indicate that the REQ message includes a call identifier. *See, e.g., Id.*, p. 7.

To remedy this deficiency, the Final Office Action attempts to rely on an inherency argument, alleging that a “call identifier” is inherent in the REQ message disclosed by *Ong*. In particular, the Final Office Action alleges that “[t]he (REQ) message cannot request filtering information that [is] associated with the call without providing the call identifier; therefore, it is inherent that the (REQ) message includes the call identifier in order to request filtering status associated with the call.” *Id.* *Ong* does not indicate, however, that the REQ message requests filtering information status associated with a particular call. Thus, the REQ message could independently determine appropriate filter information to send the firewall in response to the REQ message and, as a result, the REQ message described by *Ong* does not necessarily include a “call identifier.” Applicants respectfully remind the Examiner that “[t]o establish inherency, the extrinsic evidence must make clear that the missing

descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” M.P.E.P. § 2112; See *In re Robertson*, 49 U.S.P.Q.2d 1949, 1150-51 (Fed. Cir. 1999). Thus, a rejection based on inherency is improper here as the REQ message described by *Ong* does not necessarily include any “call identifier.” Consequently, *Ong* still fails to disclose “receiving a request message from a remote node, wherein the request message includes a call identifier; [and]. . . transmitting an acknowledgement message to the remote node, wherein the acknowledgement message identifies the filter status” as recited by Claim 7.

As a result, *Ong* fails to recite every element of Claim 7. Claim 7 is, thus, allowable for at least these reasons. Although of differing scope from Claim 7, Claims 15, 24, and 28 are allowable for at least analogous reasons. Applicants respectfully request reconsideration and allowance of Claims 7, 15, 24, and 28, and their respective dependents.

Rejection of independent Claims 1-28 under 35 U.S.C. § 102 over *Cao*

In response to rejections over *Cao* issued in the previous Office Action, Applicants submitted a Declaration under Rule 132 (the “Declaration”) with the April 30 Response. The Declaration was signed by, Feng Cao, one of the inventors and asserted that *Cao* described the work of the inventors of the present Application. The Final Office Action asserts that the Declaration is insufficient to overcome the rejection of Claims 1-28 under 35 U.S.C. § 102 over *Cao* because “[t]he declaration was signed by only one Applicant Feng Cao, the other two Applicants did not sign the declaration.” Final Office Action, p. 8. The Final Office Action provides no statutory or case law support for the proposition that a declaration under 37 C.F.R. § 1.132 must be signed by all applicants to an application.

The M.P.E.P. does not establish any requirement that Rule 132 declarations be signed by all inventors. Moreover, case law indicates clearly that such a requirement does not exist. According to relevant case law, a declaration establishing that a cited reference is the work of an inventor to the relevant application does not need to be signed by even a single inventor, let alone all of the inventors. For example, in *In re Mathews*, 408 F.2d 1393 (C.C.P.A. 1033 (1969), the Court of Customs and Patent Appeals ruled that a Rule 132 declaration signed

only by the patentee of a cited reference (and not by any inventor of the appealed application) could be used to overcome a rejection based on the cited reference. *Id.* at 1395-96. Similarly, in *Ex Parte Cloke*, 2002 WL 182164 (B.P.A.I. 2002), the Board of Patent Appeals and Interferences, citing *Mathews*, determined that there was no requirement that a submitted Rule 132 declaration even be signed by the applicant. *Id.* at *4. The Board determined that the appellant could remove an earlier patent as a reference by submitting a Rule 132 declaration from a third party that was neither an inventor on the earlier patent or the appealed application. *Id.* at *7.

As a result, no requirement exists mandating that a Rule 132 declaration be signed by all the inventors of the relevant application. Thus, the Declaration, as submitted with the April 30 Response, was sufficient to remove *Cao* as a reference under 35 U.S.C. §§ 102 and 103. Another copy of the Declaration is submitted herewith. In light of the factual assertions set forth by the Declaration, a rejection of any claims of the present Application over *Cao* is improper. Claims 1-28 are thus allowable. Applicants respectfully request reconsideration and allowance of Claims 1-28.

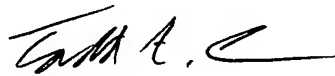
Conclusions

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any other required fees or to credit any overpayments to Deposit Account No. 02-384 of Baker Botts L.L.P.

Respectfully submitted,

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